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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

B5

FILE: [redacted] Office: TEXAS SERVICE CENTER Date:

JAN 18 2011

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, initially approved the preference visa petition. Subsequently, the Director, Texas Service Center (hereinafter "the director") issued a notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that the Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a research physicist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States.

In the final NOR, the director did not contest that the petitioner qualifies for the classification sought, but concluded that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States. The director first noted that the U.S. Federal Bureau of Investigations (FBI) has expressed concerns that the petitioner's continued presence in the United States would have potential adverse national security implications. The director further concluded that the record lacked evidence of the petitioner's influence in his field. Thus, the petitioner must overcome both grounds of denial.

On appeal, counsel submits a brief and additional exhibits. For the reasons discussed below, we uphold the director's decision. The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Moreover, U.S. Citizenship and Immigration Services (USCIS) has "complete discretion" whether to approve a national interest waiver of the alien employment certification process, a judgment "unfettered by any statutory standard whatsoever." *Zhu v. Gonzalez,* 411 F. 3d 292, 295 (D.C. Cir. 2005); *see also Lohiri v. Department of Homeland Security,* 2010 WL 797853, *1 (E.D. La. March 3, 2010).

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in theoretical physics from Nanjing University in China. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

We acknowledge that the petitioner filed the instant petition on August 26, 1996 and that the Vermont Service Center initially approved the petition on September 18, 1996, prior to the 1998 issuance of *NYSDOT,* 22 I&N Dec. at 215. That said, *NYSDOT* is an interpretive decision that does not create new rights or duties, but rather provides a reasonable and predictable interpretation of the statute. *See Talwar v. INS*, 2001 WL 767018, *7 (S.D.N.Y. July 9, 2001). USCIS is not precluded from retroactively applying precedent decisions that are a reasonable interpretation of relevant statute and regulations. *See Golden Rainbow Freedom Fund v. John Ashcroft,* 2001 WL 1491258, *1 (W.D. Washington Sept. 14, 2000). Moreover, we note in this instance that the issuance of *NYSDOT* was not the trigger for revisiting the approval. Rather, one of the grounds of the director's decision is derogatory information from another government agency.

The derogatory information, provided to the petitioner as an attachment to the NOIR, consists of a declaration from an FBI agent who participated in an interview of the petitioner in 2004. The agent expressed concerns over the petitioner's initial denial of having any contact with the [redacted] after 1992 and subsequent admission that the petitioner not only advised NINT of his intent to remain in the United States but also that he requested reference letters from individuals at [redacted] after 1992. In addition, the agent questions why the petitioner, a former department deputy director at [redacted], would profess no knowledge of the work

being performed by his subordinates at [redacted] The agent further notes that the petitioner denied that [redacted] was involved with nuclear technology in 1994 but conceded as much in 2004. The agent concludes that the petitioner potentially poses a threat to the national security of the United States.

The record also contains a letter written by the [redacted] in response to an inquiry about the petitioner's case submitted by the petitioner. We note that the petitioner himself introduced this letter into the record. Of particular note in this proceeding, the letter references conflicts between the petitioner's testimony and "information provided to the FBI by other government agencies."

In response to the director's NOIR and again on appeal, counsel and the petitioner attempt to explain the petitioner's responses to the FBI. Specifically, the petitioner asserts that he initially told the FBI that he did not have official or business contracts with [redacted] after leaving his employment there in the context of the FBI's request for him to provide them with information about current projects at [redacted] The petitioner explains that he later qualified that response by acknowledging private correspondence with individuals at [redacted] The petitioner further asserts that he had only denied knowing about projects his subordinates may have performed in other departments within [redacted] Finally, the petitioner asserts that he never denied that [redacted] was involved with nuclear technology; rather, he asserts that he claimed that his own department was not involved in such technology. The petitioner also challenges the FBI's concerns that the petitioner declined to take a polygraph test, asserting that he agreed to do so under certain conditions. Counsel also questions the reliability of such tests.

Even accepting the petitioner's explanations regarding his willingness to take a polygraph test, the petitioner's attempt to explain or reconcile the inconsistencies raised by the FBI agent will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner submits no evidence that he has presented these explanations to the FBI and that the FBI is no longer concerned about the petitioner's potential threat to the national security of the United States.

Counsel has also asserted that the national security concerns raised by the FBI relate to the petitioner's admissibility pursuant to section 212 of the Act and are not appropriate considerations for visa petition adjudication. The petitioner, however, seeks a discretionary waiver of the alien employment certification process that is, by its very terms, based on establishing a benefit to the national interest. It logically follows that the potential to pose a national security threat is extremely relevant to whether the petitioner will benefit the national interest.

It falls within our delegated discretionary authority in adjudicating national interest waivers to afford considerable weight to the opinion of the FBI on matters of national security. While we acknowledge favorable findings by the Department of Energy and the United States Information Agency regarding a waiver of the two-year foreign residence requirement for the petitioner's nonimmigrant J-1 visa, those findings date from 1996. The record contains no evidence that these agencies would reach a similar conclusion given the FBI's concerns as presented in the agent's

declaration. We are satisfied that the FBI's concerns in this matter form a sufficient basis for exercising our discretion to revoke the approval of the national interest waiver.

Furthermore, we note that the petitioner was ordered removed from the United States on March 18, 2008 and left the United States on March 21, 2008. A Form I-294 Warning to Alien Ordered Removed or Deported dated October 26, 2007 in the record of proceeding indicates that the petitioner is precluded from entering, attempting to enter or being in the United States for 10 years from his date of departure. Thus, there is no reason to believe that the petitioner will be able to perform any research in the United States for the foreseeable future. When considering an alien's ability to benefit the United States, USCIS and the AAO cannot ignore the petitioner's current circumstances and their obvious impact on the petitioner's ability to bring about the proposed benefit.

Beyond the issues raised by the FBI declaration, it must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *NYSDOT,* 22 I&N Dec. at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

If we were to assume no national security concerns, the petitioner works in an area of intrinsic merit, laser, microwave and accelerator physics research. In addition, once again assuming no national security concerns, the proposed benefits of the petitioner's work, improved accelerator technology, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

The petitioner has submitted evidence regarding the importance of the projects on which the petitioner worked and proposes to work. Eligibility for the waiver, however, must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original

innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The record includes the petitioner's academic credentials. Academic requirements can be enumerated on an application for alien employment certification and cannot serve as a basis to waive the necessity of that certification. At issue is whether the petitioner will serve the national interest to a greater degree than an available U.S. worker with the same minimum qualifications, including education.

The petitioner also submitted scientific research articles. While the petitioner's articles may demonstrate original work, as stated above, original innovation is insufficient without evidence that the innovation serves the national interest. [redacted] asserts that the petitioner's "groundbreaking research paper has been cited by many researchers in prominent institutions in Israel, Ukraine, Russia and the United States, including my group at Argonne National Laboratory." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). The record does not contain any evidence of these citations, such as the citations themselves or a download from an Internet citation index. Thus, the petitioner has not demonstrated that his work has been cited. Moreover, [redacted] letter is dated May 3, 2007, eleven years after the petitioner filed his petition. It is not clear that [redacted] is referencing citations that predate the filing of the petition, the date as of which the petitioner must establish his eligibility. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

In addition, the petitioner submitted evidence of his membership in the International Society for Optical Engineering and the American Physical Society The petitioner's professional memberships fall under a category of evidence that can be considered evidence of exceptional ability, 8 C.F.R. § 204.5(k)(3)(ii)(E), a classification that normally requires an approved alien employment certification. Section 203(b)(2) of the Act. We cannot conclude that submitting qualifying evidence under one of those categories, or even under the requisite three categories of evidence, warrants a waiver of the alien employment certification in the national interest. *NYSDOT,* 22 I&N Dec. at 218, 222.

Reference letters constitute the remaining evidence. [redacted] asserts that he knew the petitioner during his ten months at the [redacted] where he "produced some excellent work." Specifically, [redacted] asserts that the petitioner wrote a complex computer code to simulate the equilibration of non-Maxwellian electron velocity distributions produced by ultra-high intensity short pulse lasers. [redacted] concludes that the petitioner's calculations "showed for the first time, the different timescales involved in the time evolution of electron velocity distributions created by high-power laser interaction. [redacted] does not explain how this petitioner's computer code or calculations have been utilized in the field.

[redacted], explains in his letter dated July 19, 1996, that the petitioner had been with the department since 1993, working with [redacted] notes that the laser "is a device of enormous potential importance to defense and to high-technology industrial applications." As stated above, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. [redacted] further asserts that the petitioner authored eight articles while at [redacted]. As discussed above, however, the record lacks evidence that these articles had garnered significant attention in the field as of the date of filing. [redacted] explains that the petitioner would soon be employed at [redacted] notes that the company closely collaborates with [redacted] While [redacted] speculates that the petitioner "will undoubtedly be of enormous value to them," [redacted] does not explain how the petitioner has already influenced the field to any degree.

In response to the NOIR, the petitioner submitted a letter from another collaborator at the [redacted] explains that the petitioner worked with high power VULCAN lasers and studied plasma. [redacted] asserts that the petitioner's numerical simulations are "crucial for us to understand the experimental results." [redacted] concludes that to the "best of [his] knowledge," the petitioner's simulation revealed, for the first time, the different timescales in the electron energy distribution [of] the extremely hot plasma." [redacted] asserts that the petitioner "provided us with clear pictures, which greatly helped experiments [*sic*] like me in comprehending the plasma physics." [redacted] does not, however, provide examples of how the petitioner's work is being used by independent physicists.

The petitioner initially submitted an unsigned letter purportedly from [redacted] a professor at [redacted] who has collaborated with the petitioner. As this letter is unsigned, it has no evidentiary value. In response to the NOIR, the petitioner submitted a copy of a 1996 letter and a 2007 letter from [redacted] both signed. In his earlier letter, [redacted] notes that the project at [redacted] is sponsored by the Department of Energy and asserts that the petitioner has been "crucial" to the success of the project so far. [redacted] asserts that the petitioner developed the theory and computational study of an accelerator device and stresses the importance of not losing momentum on the project. [redacted] speculates that a similarly qualified person, if available, "would require at least one year to locate and familiarize with this work." Simple exposure to advanced technology, however, essentially constitutes occupational training which can be articulated on an application for an alien employment certification. *Id.* at 221. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* While [redacted] attests generally to the petitioner's contributions to the specific project at [redacted] he provides no examples of the petitioner's influence in the field.

In his 2007 letter, [redacted] expands on his previous assertions. [redacted] notes that the size of accelerators necessary for current research is so large as to necessitate international collaborations overseas. Thus, the development of smaller, cheaper, better accelerators which can be constructed in

the United States is required to continue such research in the United States. [redacted] states that another collaborator at [redacted] "showed that [the petitioner's] analysis of large orbit effects in [IFEL] devices was correct." [redacted] further asserts that the petitioner "developed a new theory for using wake fields to accelerate charge bunches to very high energy." While [redacted] asserts that this project continues and is highly regarded, he does not explain how the petitioner's theory is being used outside of [redacted] Finally, [redacted] discusses the petitioner's accomplishments after the date of filing, which cannot establish his eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49.

[redacted] asserts that many of the projects at [redacted]. were initiated by the petitioner's theoretical research. While he asserts that these projects "have had great impact on the accelerator physics community," he provides no examples of the petitioner's theories being used outside of [redacted]. Significantly, [redacted] does not claim to have relied on the petitioner's work and there is no evidence that he has cited the petitioner's work. Finally, [redacted] discusses the petitioner's wakefield theory published in 1997, after the date of filing. As stated above, the petitioner must establish his eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49.

The record contains a May 30, 1996 joint letter from [redacted] and [redacted] recommending that the two-year foreign residency attached to the petitioner's J-1 exchange visitor visa be waived. The letter notes that if the petitioner remained in the United States, he would "perform crucial research work" for [redacted], the recipient of a Department of Energy grant. The letter explains that the petitioner "has been carrying out the bulk of the theoretical and computational work on the [redacted] and the [redacted] The letter predicts the future importance of the projects and concurs with the opinions of those at [redacted] that the petitioner "is necessary to ensure the successful construction, testing and completion" of these projects. The letter does not, however, provide specific examples of the petitioner's innovations or their influence in the field. Moreover, the record lacks evidence that the Department of Energy continues to agree that it would be beneficial to the United States to allow the petitioner to continue in this line of work in the United States in light of the FBI's concerns, discussed above.

[redacted], asserts that the petitioner's contributions have been vital to the project at [redacted] and that the petitioner is "uniquely informed on scientific details of the project." [redacted] concludes that there would be "a substantial set-back to this project if [the petitioner] were to move back to China, and not be available to continue his valuable contributions." [redacted] notes, however, that the project's duration is only two years. The regulation at 8 C.F.R. § 214.2(h)(16)(i) permits an alien to work under an H-1B visa while a visa petition or labor certification is pending. There are also other nonimmigrant categories. Therefore, the petitioner's continued participation in [redacted] particular two-year project was obviously not contingent on the petitioner obtaining permanent resident status in 1996 when the petition was filed.

[redacted] discusses the petitioner's work at this company between 2002 and 2006, well after the petition was filed. This information does not relate to the petitioner's eligibility as of the date of filing, the date as of which he must establish his eligibility. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

The letters considered above primarily contain bare assertions of talent, originality and vague claims of contributions without specifically identifying how those contributions have influenced the field. Merely repeating the language of the legal requirements does not satisfy the petitioner's burden of proof.[1] The independent letters do not suggest the authors have applied the petitioner's work. The petitioner also failed to submit corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

The record shows that the petitioner is respected by his immediate circle of colleagues and has contributed to various projects within his field of endeavor. It can be argued, however, that most research, in order to receive funding, must present some benefit to the general pool of scientific

[1] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 18 (D.C. Dist. 1990).

knowledge. It does not follow that every researcher working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.